

TOM DAVIS, VIRGINIA,
CHAIRMAN

CHRISTOPHER SHAYS, CONNECTICUT
DAN BURTON, INDIANA
ILEANA ROS-LEHTINEN, FLORIDA
JOHN M. McHUGH, NEW YORK
JOHN L. MICA, FLORIDA
GIL GUTKNECHT, MINNESOTA
MARK E. SOUDER, INDIANA
STEVEN C. LATOURETTE, OHIO
TODD RUSSELL PLATTS, PENNSYLVANIA
CHRIS CANNON, UTAH
JOHN J. DUNCAN, JR., TENNESSEE
CANDICE MILLER, MICHIGAN
MICHAEL R. TURNER, OHIO
DARRELL ISSA, CALIFORNIA
JON C. PORTER, NEVADA
KENNY MARCHANT, TEXAS
LYNN A. WESTMORELAND, GEORGIA
PATRICK T. McHENRY, NORTH CAROLINA
CHARLES W. DENT, PENNSYLVANIA
VIRGINIA FOXX, NORTH CAROLINA
JEAN SCHMIDT, OHIO
VACANCY

ONE HUNDRED NINTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
FACSIMILE (202) 225-3974
MINORITY (202) 225-5051
TTY (202) 225-6852

<http://reform.house.gov>

HENRY A. WAXMAN, CALIFORNIA,
RANKING MINORITY MEMBER

TOM LANTOS, CALIFORNIA
MAJOR R. OWENS, NEW YORK
EDOLPHUS TOWNS, NEW YORK
PAUL E. KANJORSKI, PENNSYLVANIA
CAROLYN B. MALONEY, NEW YORK
ELIJAH E. CUMMINGS, MARYLAND
DENNIS J. KUCINICH, OHIO
DANNY K. DAVIS, ILLINOIS
WM. LACY CLAY, MISSOURI
DIANE E. WATSON, CALIFORNIA
STEPHEN F. LYNCH, MASSACHUSETTS
CHRIS VAN HOLLEN, MARYLAND
LINDA T. SANCHEZ, CALIFORNIA
C.A. DUTCH RUPPERSBERGER,
MARYLAND
BRIAN HIGGINS, NEW YORK
ELEANOR HOLMES NORTON,
DISTRICT OF COLUMBIA

BERNARD SANDERS, VERMONT,
INDEPENDENT

May 1, 2006

Joseph T. Kelliher
Chairman
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Dear Mr. Kelliher:

Thank you for your response to my second letter regarding the settlement with Southern Company negotiated by your chief of staff, Daniel Larcamp. Your response contains new information, including the fact that the settlement negotiations with the Southern Company were initiated by Mr. Larcamp under your direction. However, the response still does not address the central questions I raised in both of my letters to you, nor does it provide the documents I requested.

The significant new information in your response is the detail it provides about the initiation of the settlement discussions. According to your letter, Mr. Larcamp, "consistent with my desire for a more constructive relationship with the states, approached Southern in mid-2005 to inquire whether it would consider entering into settlement discussions. Southern indicated in the affirmative and Mr. Larcamp approached me with a request to become nondecisional in the case. I approved that request."¹

The response does not, however, provide precise answers to key questions. For instance, in my second letter, I asked "whether you had communications with Mr. Larcamp about the proceeding before he was designated non-decisional and, if so, what those communications were."² You provide a partial response by stating, "In approving Mr. Larcamp's request, I did not offer any views regarding the nature of substance of any potential settlement or otherwise

¹ Letter from Joseph T. Kelliher, Chairman, Federal Energy Regulatory Commission, to Rep. Henry A. Waxman (Apr. 25, 2006).

² Letter from Rep. Henry A. Waxman to Joseph T. Kelliher, Chairman, Federal Energy Regulatory Commission (Mar. 30, 2006).

instruct Mr. Larcamp how to proceed as a settlement facilitator.”³ You also state, “I did not have any subsequent discussions with Mr. Larcamp regarding the case once he became nondecisional.”⁴ This response leaves open the question of whether you and Mr. Larcamp discussed your view of the case before you approved his request to become nondecisional.

Your letter also does not address key statements in a December 5, 2005, Commission email. According to the email, Mr. Larcamp stated that “support for this proceeding at the chairman level has vanished with Joe taking over from Pat.”⁵ The email states that Mr. Larcamp told the staff that “the case would be a tough one politically and that he strongly prefers settlement.”⁶ It also reports that Mr. Larcamp said that “Southern would likely apply political pressure.”⁷ According to the email, Mr. Larcamp explained, “even if the case goes forward, the Chairman would not be eager to expedite it and it would likely languish through 2007.”⁸ Instead of providing your thoughts on these statements, your letter merely points to other statements in the email that you contend demonstrate the Commission’s resolve to continue investigating Southern Company. You also state, “I have no reason to believe that this document in any way accurately reflects Mr. Larcamp’s statements.”⁹ This is a surprising statement given that the email was written by a career Commission employee who attended and prepared notes of the meeting between Mr. Larcamp and trial staff.

Finally, your letter does not provide the communications between Mr. Larcamp and the Southern Company from either before or during the settlement negotiations.

In order to more fully respond to the concerns expressed in my letters, I would appreciate answers to the following specific questions:

1. Did you at any time tell Mr. Larcamp that you no longer supported the case against Southern?

³ Letter from Joseph T. Kelliher, Chairman, Federal Energy Regulatory Commission, to Rep. Henry A. Waxman (Apr. 25, 2006).

⁴ *Id.*

⁵ Federal Energy Regulatory Commission email (Dec. 5, 2005).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

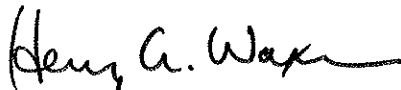
⁹ Letter from Joseph T. Kelliher, Chairman, Federal Energy Regulatory Commission, to Rep. Henry A. Waxman (Apr. 25, 2006).

Joseph T. Kelliher
May 1, 2006
Page 3

2. Did you at any time discuss the political implications of the case with Mr. Larcamp or indicate that you preferred to settle the case in order to avoid "political pressure"?
3. What are the reasons for your belief that the December 5, 2005, email inaccurately depicts the statements made by Mr. Larcamp to Commission trial staff on December 2, 2005?
4. Have you asked the other participants of the December 2, 2005, meeting whether the email is an accurate summary of the meeting?
5. Did Mr. Larcamp have communications with representatives of Southern regarding this case prior to beginning negotiations with Southern? If so, what were those communications?
6. Did you advise or direct Mr. Larcamp to exclude the Commission trial staff from participating in settlement discussions with Southern?
7. Was Commission trial staff permitted to participate in the settlement negotiations with Southern? Did they do so?
8. Internal Commission emails indicate that the Commission trial staff obtained the terms of the settlement not from Mr. Larcamp, but from Southern. Is this accurate? Is this consistent with Commission policy and procedure?
9. Was the draft settlement with Southern modified to reflect trial staff concerns with the deal?

I look forward to another prompt response to these outstanding questions.

Sincerely,

A handwritten signature in black ink that reads "Henry A. Waxman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Henry A. Waxman
Ranking Minority Member